

APPEAL NO. 032960
FILED DECEMBER 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 8, 2003. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the appellant (carrier) is not relieved from liability for compensation, because the injury did not arise out of an act of a third person intended to injure the claimant for personal reasons; and (3) the claimant had disability from February 24 through April 8, 2003. The carrier appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in denying its request for subpoena. The claimant urges affirmance.

DECISION

Affirmed.

As stated above, the carrier asserts that the hearing officer erred in denying its request for subpoena. We note that the carrier did not reurge its request for subpoena or otherwise preserve error in the record of the hearing below. Additionally, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.12(d) (Rule 142.12(d)) provides, in part, that a hearing officer may deny a request for a hearing subpoena upon a determination that the testimony may be adequately obtained by deposition or written affidavit. The carrier's witness provided a detailed affidavit regarding his knowledge of the incident, which was admitted at the hearing below. Accordingly, we perceive no error.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge